

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH WHITE,

Petitioner,

v.

TERRY SHERMAN,

Respondent.

Case No. 2:05-CV-78

Hon. Richard Alan Enslen

ORDER

Petitioner Kenneth White has objected to United States Magistrate Judge Timothy P. Greeley's Report and Recommendation of May 4, 2005. The habeas petition concerns Petitioner's parole revocation and parole revocation sentence. Said Report recommended dismissal of the habeas petition pursuant to 28 U.S.C. § 2244(d)(1) due to an untimely petition. The Court reviews the Report and the Objection *de novo* in accordance with 28 U.S.C. § 636(b)(1).

Upon such review, the Court determines that the Report should be rejected because it is incomplete. The Court understands the habeas petition as raising a claim for actual innocence. The recent Sixth Circuit Court of Appeals' decision in *Souter v. Jones*, 395 F.3d 577, 600 (6th Cir. 2005) held that "actual innocence"—under limited circumstances—may be an exception to the section 2244(d)(1) limitation period. This is significant because Petitioner asserts actual innocence in his habeas petition. Because there are no findings in the Report pertinent to the claim of actual innocence, the Court will reject the Report as incomplete. In doing so, the Court makes no findings as to whether an "actual innocence" exception should apply in the case of parole revocation proceedings or whether Petitioner has made a credible showing of actual innocence based on newly

discovered evidence, which matters are left to the consideration and further findings of the Magistrate Judge.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Kenneth White's Objection (Dkt. No. 14) is **GRANTED** to the extent that the Report and Recommendation (Dkt. No. 13) is **REJECTED** as incomplete.

DATED in Kalamazoo, MI:
May 24, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE